



**SENATE SUBSTITUTE AMENDMENT 1,  
TO 1995 SENATE BILL 11**

February 28, 1995 - Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to renumber and amend* 895.045; and *to create* 895.045 (2) and 895.85  
2 of the statutes; **relating to:** comparative negligence and punitive damages.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 **SECTION 1.** 895.045 of the statutes is renumbered 895.045 (1) and amended to  
4 read:

5 895.045 (1) (title) COMPARATIVE NEGLIGENCE. Contributory negligence shall  
6 does not bar recovery in an action by any person or the ~~person's~~ person's legal  
7 representative to recover damages for negligence resulting in death or in injury to  
8 person or property, if such that negligence was not greater than the negligence of the  
9 person against whom recovery is sought, but any damages allowed shall be  
10 diminished in the proportion to the amount of negligence attributable attributed to  
11 the person recovering. The negligence of the plaintiff shall be measured separately  
12 against the negligence of each party found to be causally negligent. The liability of  
13 each party found to be causally negligent whose percentage of causal negligence is  
14 less than 51% is limited to the percentage of the total causal negligence attributed

1 to that party. A party found to be causally negligent whose percentage of causal  
2 negligence is 51% or more shall be jointly and severally liable for the damages  
3 allowed.

4 **SECTION 2.** 895.045 (2) of the statutes is created to read:

5 895.045 (2) CONCERTED ACTION. Notwithstanding sub. (1), if 2 or more parties  
6 act in accordance with a common scheme or plan, those parties are jointly and  
7 severally liable for all damages resulting from that action, except as provided in s.  
8 895.85 (5).

9 **SECTION 3.** 895.85 of the statutes is created to read:

10 **895.85 Punitive damages. (1) DEFINITIONS.** In this section:

11 (a) “Defendant” means the party against whom punitive damages are sought.

12 (b) “Double damages” means those court awards made under a statute  
13 providing for twice, 2 times or double the amount of damages suffered by the injured  
14 party.

15 (c) “Plaintiff” means the party seeking to recover punitive damages.

16 (d) “Treble damages” means those court awards made under a statute  
17 providing for 3 times or treble the amount of damages suffered by the injured party.

18 **(2) SCOPE.** This section does not apply to awards of double damages or treble  
19 damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9),  
20 51.61 (7), 103.96 (2), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51  
21 (2) and (3).

22 **(3) STANDARD OF CONDUCT.** The plaintiff may receive punitive damages if  
23 evidence is submitted showing that the defendant acted maliciously toward the  
24 plaintiff or in an intentional disregard of the rights of the plaintiff.

1           **(4) PROCEDURE.** If the plaintiff establishes a prima facie case for the allowance  
2 of punitive damages:

3           (a) The plaintiff may introduce evidence of the wealth of a defendant; and

4           (b) The judge shall submit to the jury a special verdict as to punitive damages  
5 or, if the case is tried to the court, the judge shall issue a special verdict as to punitive  
6 damages.

7           **(5) APPLICATION OF JOINT AND SEVERAL LIABILITY.** The rule of joint and several  
8 liability does not apply to punitive damages.

9           **SECTION 4. Initial applicability.**

10           (1) This act first applies to civil actions commenced on the effective date of this  
11 subsection.

12

**(END)**